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BOOK REVIEWS.

KENNETH M. SPENCE, *Editor-in-Charge.*

WATER RIGHTS IN THE WESTERN STATES. By SAMUEL E. WEIL, 2d Ed. San Francisco: Bancroft-Whitney Co. 1908. pp. lxvii, 974.

The second edition of Mr. Weil's excellent book has now, as the result of the revision and expansion to which the work has been subjected, reached such a state of completeness that it may, for purposes of review, be treated as a new work. All the characteristic features of the old edition—the careful historical review of the doctrine of appropriation, the exhaustive analysis of the whole subject of water rights on both sides of the Atlantic, the full and discriminating discussion of cases—have been retained in the new edition; but, along with a general amplification of the work and the restatement of some of its doctrines in the light of later cases, there is much new matter of value, not only to the professional student of law but to that large and growing body of citizens who are interested in the problem of the reclamation of the arid lands of the West. Of especial interest in this connection are Chapters V and VI of Part V, dealing respectively with National Irrigation and Water Users' Associations. The former of these is based on circulars issued by the Department of the Interior and sets forth in detail the procedure contemplated by the National Reclamation Act of June 17, 1902 (32 Stats. at Large, 388), and the latter, prepared by Mr. Morris Bien, Supervising Engineer of the United States Reclamation Service, is a valuable exposition of the methods by which effect is given to the Act. Also of interest to a wider audience than that to which the book is primarily addressed is the information (pp. 725-731) that the course of judicial decision with reference to the doctrine of appropriation in the arid regions is viewed with disapprobation by the President of the United States as well as by many hydraulic engineers and that systematic efforts are being made to bring about a more uniform policy with respect to water rights in those regions by legislation.

Of the body of the book little need be said except that it contains upon the whole a very complete as well as accurate statement of the law of water rights in this country. Being intended primarily for Western consumption it is naturally written from the Western point of view. Accordingly, the law of appropriation is treated before the common law doctrines of riparian rights, percolating waters, etc. Of the relative importance of these doctrines in the arid regions it does not become an Eastern reviewer to speak with confidence, but neither the apportionment of space to the several topics by our author nor his exposition of the extent to which the common law doctrines obtain in most of the far Western States (Sects. 22, 23) disclose a sufficient reason for reversing the usual order of treatment. The arrangement adopted is further open to the objection that it involves a great deal of unnecessary repetition. The doctrine of appropriation is, properly enough, dealt with as a result of the peculiar conditions prevailing in California and other Western States, and these doctrines and conditions are compared and contrasted with

those of the older civilization, and thus the principal rules of the common law relating to water rights are outlined and commented on at considerable length in the early part of the book, only to be restated and elaborated in the part of the work particularly appropriated to them. Indeed, it may be said, that overelaboration and repetition are the principal faults of the book. It is believed that it could by suitable condensation and rearrangement of its material, without impairing its value, be reduced one-fourth in volume.

The further criticism may be ventured that in his identification of the English and American law of riparian rights the author goes too far in placing the former as well as the latter on the basis of reasonable user. It is submitted that, with the doubtful exception of the doctrine of "natural user" (Sects. 268, 295), the English authorities lend no support to the view that a material interference with a water-course, resulting in actual damage to a riparian proprietor, can be justified by the plea that defendant's use was reasonable and proper; nor does the state of the authorities in this country support the author's sweeping statement that such is the general American rule. The discussion of the law of underground waters (Sects. 352-382) leaves little to be desired. Its analysis of the English cases is sound and its exposition of the modern American doctrine of reasonable use of percolating waters, founded on *Forbell v. City of New York* (1900), 164 N. Y. 522, and *Katz v. Walkinshaw* (1903) 141 Cal. 116, is, notwithstanding a certain diffuseness of treatment, thorough and commendable. That the two great lights in the author's firmament are two California cases—*Lux v. Haggan* (1886) 69 Cal. 255, and *Katz v. Walkinshaw, supra*—does not render the book less valuable to those for whom it is intended.

PROBATE REPORTS ANNOTATED. Edited by WILLIAM LAWRENCE CLARK. New York: Baker, Voorhis & Co. 1908. Vol. XII. pp. xxiv, 807.

The plan of this series, as stated by the publishers, is to give, in about one volume a year, recent important decisions of the highest courts of the different states, and of the Federal courts, upon matters of which probate and surrogate's courts have jurisdiction, or involving questions of probate law and practice; each volume to contain approximately one hundred cases given in full, together with exhaustive notes upon the questions decided in a number of the most representative of these cases; and, in addition, memoranda, in digest form, of such important recent decisions as are not presented in full.

Considering the recent improvement in digesting cases, and the fact that the best digests, by the issue of annual volumes, present a full summary of the decisions within a very short period after they are made; and the further fact that unofficial publications, such as those issued by the West Publishing Company, enable practicing lawyers to become acquainted with decisions of the courts within a few days after their rendition, the first impression would be that there is at present, little necessity for any series of reports of the general character of the one under review. It is probable that for lawyers practicing in large cities and having access to the well-equipped libraries to be found therein, the usefulness of such a series, even as a time-saving device, is questionable.